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Federal Communications Commission

DA 97-1600

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-77
Table of Allotments,)	RM-8780
FM Broadcast Stations.)	RM-8918
(Hobbs, Tatum and Jal, New Mexico))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 23, 1997

Released: August 1, 1997

By the Chief, Allocations Branch:

1. At the request of Great Plains Broadcasting Co., Inc. ("Great Plains"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 4658 (1996), proposing the allotment of Channel 279A to Hobbs, New Mexico, as the community's fifth local FM and seventh local aural service. Comments were filed by Great Plains and Ojeda Broadcasting, Inc. ("Ojeda"), licensee of Station KLMA(FM), Hobbs, stating their individual intention to apply for the channel, if allotted to Hobbs. In response to the counterproposal filed by MTD, Inc. ("MTD"),¹ requesting the allotment of Channel 296C to Tatum, New Mexico, as the community's first local aural transmission service, the Commission also has before it the Order to Show Cause, 12 FCC Rcd 4172 (1997), directed to John H. Wiggins ("Wiggins"), permittee of Station KXJW, Channel 296C1, Jal, New Mexico. To accommodate the allotment of Channel 296C at Tatum, MTD also requested that Channel 279C1 be substituted for Channel 296C1 at Jal. Wiggins filed comments in response to the Order to Show Cause.

2. As stated in the Order to Show Cause, Tatum is an incorporated community of 768 persons, with its own elected government which provides the residents with various municipal services. In addition, Tatum has its own local schools, library, senior citizen organization, and a number of businesses, some of which incorporate Tatum in their name. Wiggins states that it has no objection to the substitution of channels but is concerned that the rule making not delay or stop the construction of Station KXJW and that he recoup any expenses incurred in relocating the station to Channel 279C1. Thus, he requests that the Report and Order explicitly state the obligation of the successful Tatum applicant to reimburse Station KXJW for the costs involved in the substitution of channels.

3. We have before us two mutually exclusive rule making proposals. Jal and Hobbs are located approximately 30 kilometers apart while the Commission's rules specify a minimum distance separation for co-channel Class A and C1 facilities of 200 kilometers. In an effort to

¹ Public Notice of the counterproposal was given on November 5, 1996, Report No. 2163.

accommodate both proposals, the staff performed a search to determine if an alternate channel was available to provide service to both Hobbs and Tatum. The study indicates that Channel 279A is the only channel available for allotment at Hobbs and Channel 296C is the only channel available for allotment at Tatum. Therefore, our decision in this proceeding is guided by the allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).² Under these priorities, the provision of a first local transmission service to Tatum provides a higher public interest benefit than does the provision of a seventh such service at Hobbs. We find that Tatum is a community for allotment purposes. Although not a populous community, it is incorporated, with its own local government, municipal services, schools, library and businesses. Accordingly, we will allot Channel 296C to Tatum and substitute Channel 279C1 for Channel 296C1 at Jal. Wiggins has consented to the modification of Station KXJW's operating channel from Channel 296C1 to Channel 279C1. In accordance with Commission policy, the ultimate permittee of Channel 296C at Tatum will be required to reimburse the permittee of Station KXJW, Jal, for the costs associated with its change of channel. See Circleville, Ohio, 8 FCC 2d 159 (1967).

Technical Summary

4. Channel 296C can be allotted to Tatum in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) west to avoid a short-spacing to Stations KPOS-FM, Channel 297C2, Post, Texas, and KSMX, Channel 298C1, Clovis, New Mexico. Channel 279C1 can be allotted to Jal at the transmitter site specified in Station KXJW's outstanding construction permit.³ Tatum and Jal are both located within 320 kilometers (199 miles) of the U.S.-Mexican border. Mexican concurrence in these allotments was requested in January, 1997, but has not yet been received. In light of the prolonged pendency of this proceeding, yet in an effort to introduce a new FM service to Tatum, we shall grant the proposal with the following interim condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."⁴

5 Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 15, 1997, the FM

² The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

³ The coordinates for Channel 296C at Tatum are 33-15-27 North Latitude and 103-27-22 West Longitude. The coordinates for Channel 279C1 at Jal are 32-25-53; 103-09-08.

⁴ The announced condition is a temporary measure as our engineering analysis has determined that proposed Channel 296C at Tatum and Channel 279C1 at Jal comply with the Agreement. Therefore, once an official response from the Mexican Government has been received, the referenced condition may be removed.

Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Jal, New Mexico	279C1
Tatum, New Mexico	296C

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the permit of John H. Wiggins for Station KXJW, Jal, New Mexico, IS MODIFIED to specify operation on Channel 279C1 in lieu of Channel 296C1, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KXJW's construction permit, BPH-950404MA), except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPH-950404MA, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

7. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the permittee, as follows: John H. Wiggins, 2300 Hammond Road, Apartment 3, Bay City, Texas 77414.

8. IT IS FURTHER ORDERED, That the petition of Great Plains Broadcasting Co., Inc. (RM-8780), to allot Channel 279A to Hobbs, New Mexico, IS DENIED.

9. The window period for filing applications for Channel 296C at Tatum will open on September 15, 1997, and close on October 16, 1997.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau